

# 2024 China International Law of the Sea Moot Court Competition

## *Case Concerning the Shipwreck of the Nuestra Señora Aparecida in the Antillean Sea (The Kingdom of Idris v. The Republic of Vespucia)*

1. The Kingdom of Idris (Idris) is a developed country located in Terraferma, and the Republic of Vespucia (Vespucia) is a developing country situated in the Columbus continent; the two States are separated by thousands of nautical miles. Idris and Vespucia share historical ties since the latter was colonized by the former from the 16<sup>th</sup> century to September 1822 when Vespucia eventually gained its political independence from Idris.

2. Idris and Vespucia ratified the 1982 United Nations Convention on the Law of the Sea (UNCLOS), on 25 August 1993 and 15 January 1990, respectively. Both States are also parties to the 2001 Convention on the Protection of the Underwater Cultural Heritage ('UNESCO Convention'), the 1972 Convention Concerning the Protection of the World Cultural and Natural Heritage ('World Heritage Convention'), and to the 1969 Vienna Convention on the Law of Treaties (VCLT).

3. On 4 October 2023 international media spread widely the news: *Beyond Sea Water*, an ocean exploration company headquartered in Idris, announced that it has found the wreckage of the *Nuestra Señora Aparecida* (hereinafter *Aparecida*), a famous Idrisian galleon disappeared while sailing on the sea more than 200 years ago. According to historical records, in April 1790 the *Aparecida* left the port of Santa Marta (Vespucia) and was in route to Malaca (Idris). The vessel was caught in the middle of a heavy storm and disappeared in the Antillean Sea. The *Aparecida* was loaded with invaluable cargo, including at least 10 tons of silver explored from different parts of the Idrisian colonial empire, sizeable amount of gold coins minted in Vespucia, vast array of precious stones, and bejewelled artifacts, carefully crafted in the old Vespucian tradition.

4. Although the *Aparecida* was part of the Idrisian Armada and the officer in charge was Rodrigo Mendes, a famous Idrisian captain, the crew of the galleon appeared to be mixed, that is, part of it was formed by Idrisian officials and part of it was recruited, employed, and provisioned by some private venture located in Malaca, which explored the colonial trade between Idris and Vespucia.

5. *Beyond Sea Water* initially refused to disclose the exact location of the wreckage. However, few days after the dissemination of the news, the ocean exploration company confirmed that the shipwreck of the *Aparecida* lies at a depth of approximately 450 metres and is situated 35 nautical miles or so from the island of San Andrés (Vespucia), that is, in the Vespucian exclusive economic zone and continental shelf. *Beyond Sea Water* has also informed that the shipwreck is in exceptional condition.

6. As soon as the location of the *Aparecida* was confirmed, both Idris and Vespucia claimed sovereign interests in the shipwreck. Monica Casares, the President of Vespucia, in an announcement on national radio, tv and internet, said the *Aparecida* belongs to Vespucia since the shipwreck lies within the maritime zones of the country. Casares also said that “Vespucian people is the legitimate owner of the cargo since it was carrying Vespucian treasures and historical relics, which belong to our cultural heritage”. Finally, Casares said that the *Aparecida* will be preserved *in situ* in order to boost tourism (scuba diving) in the island of San Andrés, bringing revenues and improving the economic life of the island.

7. More or less simultaneously to Casares announcement, Jose Luiz Gomez, the Prime Minister of Idris, delivered a speech before the National Parliament stating that the *Aparecida*, although sunken, is still an Idrisian state vessel and is protected by sovereign immunity from any foreign interference. Prime Minister Gomez also asserted that he has authorized the displacement of the *Marina*, a state-owned vessel, to the location of the shipwreck to collect further information of the *Aparecida*.

8. The following days were of intensive exchange of diplomatic messages between the ministries of foreign affairs of Vespucia and Idris concerning the *Aparecida* and the displacement of the *Marina* to the Antillean Sea. On the one hand, Vespucian government reiterated its claims over the *Aparecida* and its cargo, emphasised that any attempt to have access to the shipwreck needs its prior consent, and refused to grant research authorization for the *Marina*. On the other hand, Idrisian government reaffirmed the status of the *Aparecida* as an Idrisian state property, asserted that the cargo and the shipwreck are interlinked for immunity purposes, and confirmed that an authorization for the *Marina* is not required since the vessel is not going to undertake marine scientific research or any economic activity in the exclusive economic zone and on the continental shelf of Vespucia.

9. In the meantime, the *Marina* has reached the site of shipwreck and almost immediately Idrisian archaeologists dived to confirm the location and the identification of the shipwreck. Two days later, the marine archaeologists boarded on the *Marina* released a short video and communication confirming that the shipwreck is indeed the *Aparecida*. The archaeologists also confirmed the excellent condition of the shipwreck and expressed their intentions to salvage the cargo and even to remove parts of the vessel, which may require excavation, since the shipwreck is embedded in sea-floor sediments.

10. As a result, a Vespucian naval vessel approached the site and the *Marina*, asked the Idrisian research vessel to leave the area. Backed by instructions of the Idrisian government the *Marina* refused to leave the site, asserting that it was not exploring or exploiting, conserving or managing the natural resources, whether living or non-living, of the exclusive economic zone and continental shelf of Vespucia.

11. A few days later, the *Marina* departed heading back to Idris. However, before it left the site the Idrisian crew emplaced a small artificial structure (15 by 30 m) for the purpose of assisting their marine archaeologists in future expeditions to the shipwreck. Two sailors stayed on the installation and were designated to maintain and protect it.

12. This new development has infuriated Vespuccian authorities. According to them, the UNCLOS grants the coastal States exclusive rights to construct, authorize and regulate the construction, operation and use of artificial islands, installations, and structures in the exclusive economic zone and on the continental shelf.

13. Thereafter, on 21 December 2023, President Casares enacted Decree no. 1,098 establishing a marine park encompassing the 200-nautical mile exclusive economic zone and continental shelf around San Andrés island. The newly established San Andrés Marine Park is a full protection zone aiming “to safeguard the representativeness of historical and ecological habitats and ecosystems of the national territory and jurisdictional waters, preserving the existing historical and biological heritage”. Moreover, the decree guarantees the right of the traditional communities of the island to use the resources of the marine park in a sustainable and rational manner.

14. In light of the recent events and in order to keep the sailors in good living conditions, Idrisian government has decided to hire the *Navarro* – a private Idrisian-flagged ship which operates in the Antillean Sea – to serve as a bunkering vessel to supply fuel oil, food, water, and other supplies to the sailors and for the maintenance of the artificial structure, while a new expedition toward the *Aparecida* is prepared.

15. The Vespuccian authorities took the decision of Idrisian government as a further escalation of tensions. On 2 January 2024, after the *Navarro* concluded its operations on the artificial structure, the *Navarro* and its crew were arrested by a Vespuccian naval ship and brought to a port at San Andrés island, for alleged violations of its sovereign rights as prescribed in the UNCLOS. After 20 hours detention, the *Navarro* and crew were released by Vespuccian authorities.

16. After releasing the *Navarro* and its crew, the Vespuccian naval ship returned to the site of the artificial structure. The idea was to remove it, but since the two Idrisian sailors showed that they were armed and prepared to resist, Vespuccian officials changed their minds and decided to block any further assistance to the installation. The Vespuccian

Minister of Foreign Affairs sent an official communication to its counterpart confirming this measure.

17. The arrest of the *Navarro* and the measures announced in the diplomatic communication by Vespucia have allegedly surprised Idrisian authorities. According to them, the blockade of the artificial structure puts the sailors' lives at risk and hinders any bilateral negotiations. Furthermore, the adoption of such measures by Vespucian authorities will prevent Idris' access and future expeditions to the *Aparecida*, which is inconsistent with international cultural heritage law.

18. Therefore, on 5 February 2024, Idris initiated proceeding against Vespucia at the International Tribunal for the Law of the Sea (ITLOS) and requested the Tribunal to adjudge and declare that:

*First*, Vespucia has breached its international obligations under the UNCLOS and the UNESCO Convention, by claiming sovereignty and jurisdiction over the *Aparecida* and its cargo;

*Second*, Vespucia has violated its international obligations under the UNCLOS and the UNESCO Convention, by demanding prior consent from Idris to access the shipwreck;

*Third*, Vespucia must respect the right of Idris to emplace an artificial structure for archaeological exclusive purposes near the site of the shipwreck;

*Fourth*, Vespucia must cease the blockade of the artificial structure and allow the Idrisian vessels (private and state-owned) to provide food, water, and oil fuel to the installation.

19. Vespucia respectfully requests the ITLOS to adjudge and declare that:

*First*, the Tribunal does not have jurisdiction over the case; or

*Second*, none of the four submissions made by Idris is admissible; or

*Third*, each of the four submissions made by Idris shall be rejected.

## **Annex 1: Declarations**

### **Declaration of the Republic of Vespuccia (upon ratification of the UNCLOS)**

“In accordance with Article 287 of the United Nations Convention on the Law of the Sea, the Republic of Vespuccia hereby declares that it chooses, as a means for the settlement of disputes concerning the interpretation or application of UNCLOS, in view of its preference for pre-established jurisdictions, either the International Tribunal for the Law of the Sea established in accordance with Annex VI (Article 287(1)(a)) or the International Court of Justice (Article 287(1)(b)), in the absence of any other means of peaceful settlement of disputes that it might prefer”.

Moreover:

“The Vespuccian Government declares, without prejudice to Article 303 of UNCLOS, that any objects of an archaeological and historical nature found within the maritime zones over which it exercises sovereignty or jurisdiction shall not be removed, without its prior notification and consent”.

Finally:

“The Vespuccian Government understands that, in accordance with the provisions of UNCLOS, the coastal State has, in the exclusive economic zone and on the continental shelf, the exclusive right to construct and to authorize and regulate the construction, operation and use of all types of installations and structures, without exception, whatever their nature or purpose”.

### **Declaration of the Kingdom of Idris (upon ratification of the UNCLOS)**

“With regard to Article 287 of the United Nations Convention on the Law of the Sea, the Idrisian Government hereby chooses the following means for the settlement of disputes concerning the interpretation and application of the Convention without specifying that one has precedence over the other: (a) the International Tribunal for the Law of the Sea established in accordance with annex VI of the Convention; (b) The International Court of Justice.”